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PUBLIC HEARING  
COMMISSION ON STATE MANDATES

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TIME: 9:30 a.m.  
DATE: January 25, 2001  
PLACE: State Capitol, Room 126  
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: YVONNE K. FENNER, CSR License #10909, RPR

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ANNETTE PORINI, Chairperson

BILL SHERWOOD, Vice Chairperson

JOHN HARIGAN

HEATHER A. HALSEY

ALBERT BELTRAMI

JOANN STEINMEIER

JOHN LAZAR

City Counsel Member

PAULA HIGASHI, Executive Director

CAMILLE SHELTON, Staff Counsel

KATHY LYNCH, Staff Counsel

SEAN AVALOS, Staff Counsel

1 --o0o--

2 PUBLIC PRESENTATIONS:

3 KEITH PETERSEN, MPA, JD, President  
SixTen and Associates

4 JEFF BELL  
5 Department of Finance

6 TIMOTHY M. BARRY, Senior Deputy County Counsel  
Representing County of San Diego

RAMON DE LA GUARDIA, Deputy Attorney General  
8 Office of the Attorney General

10 --o0o--

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1	ERRATA SHEET		
2			
3	Page	Line	Correction
4	18	15	Change "--" to "the Rodda Act"
5	18	17	Change "--" to "the Rodda Act"
6	18	22	Change "target" to "retirement"
7	32	20	Change "Lampert" to "Lempert"
8	34	8	Change "forum" to "dormitory"
9	39	17	Insert "of" after "history"
10	39	17	Change "incorrectly" to "correctly"
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1           BE IT REMEMBERED that on Thursday, the 25th  
2   day of January, 2001, commencing at the hour of  
3   9:32 a.m., thereof, at the State Capitol, Room 126,  
4   Sacramento, California, before me, Yvonne K. Fenner,  
5   a Certified Shorthand Reporter in the State of  
6   California, the following proceedings were had:

7                               --o0o--

8           CHAIRPERSON PORINI: All right. We'll go ahead  
9   and start our January 25th meeting of the Commission on  
10  State Mandates. May I have a roll call.

11          MS. HIGASHI: Mr. Beltrami.

12          MR. BELTRAMI: Here.

13          MS. HIGASHI: Ms. Halsey.

14          MS. HALSEY: Here.

15          MS. HIGASHI: Mr. Harigan.

16          MR. HARIGAN: Here.

17          MS. HIGASHI: Mr. Lazar.

18          MR. LAZAR: Here.

19          MS. HIGASHI: Mr. Sherwood.

20          MR. SHERWOOD: Here.

21          MS. HIGASHI: Ms. Steinmeier.

22          MS. STEINMEIER: Here.

23          MS. HIGASHI: Ms. Porini.

24          CHAIRPERSON PORINI: Here.

25          All right. That takes us to our first item of

1 business today, that is?

2 MS. HIGASHI: The first item of business is

3 election of officers. State law requires the members

4 elect a chairperson and vice chairperson for the

5 Commission on State Mandates, and this election is

6 required to take place at the January meeting pursuant

7 to the Commission's regulations.

8 Are there any nominations for the office of

9 chairperson?

10 MS. HALSEY: Yes.

11 MR. SHERWOOD: Yes.

12 MS. HIGASHI: Mr. Sherwood.

13 MR. SHERWOOD: Yes. I would like to nominate

14 the director of the Department of Finance, Timothy Gage,

15 as chair.

16 MS. HIGASHI: Is there a second?

17 MS. HALSEY: Yes.

18 MS. HIGASHI: Ms. Halsey.

19 Is there any discussion? It's been moved and

20 seconded that Mr. Timothy Gage, Director of the

21 Department of Finance, be elected chairperson. All

22 those in favor please indicate by saying "aye."

23 MULTIPLE SPEAKERS: Aye.

24 MS. HIGASHI: Any opposed?

25 Mr. Gage is elected chairperson.

1           CHAIRPERSON PORINI: All right. Then we need to  
2   elect our vice chair. Ms. Steinmeier.

3           MS. STEINMEIER: I'd like to nominate our  
4   treasurer, Phil Angelides.

5           CHAIRPERSON PORINI: I'd like to second that.  
6           Is there any discussion?

7           Then all in favor of electing the Treasurer as  
8   the vice chair, please indicate with "aye."

9           MULTIPLE SPEAKERS: Aye.

10          CHAIRPERSON PORINI: Opposed?

11          All right. Congratulations.

12          MR. SHERWOOD: Well, thank you.

13          CHAIRPERSON PORINI: We'll move on. Our next  
14   item.

15          MS. HIGASHI: Item 2, the proposed minutes for  
16   adoption from the November 30th hearing.

17          CHAIRPERSON PORINI: Any corrections, additions,  
18   changes, comments?

19          Okay. May I have a motion?

20          MR. BELTRAMI: So move, Madame Chair.

21          CHAIRPERSON PORINI: Okay.

22          MS. STEINMEIER: Second.

23          CHAIRPERSON PORINI: I have a motion and a  
24   second. All those in favor indicate with "aye."

25          MULTIPLE SPEAKERS: Aye.

1 CHAIRPERSON PORINI: Opposed?

2 Minutes carry.

3 That takes us to Item No. 3.

4 MS. HIGASHI: Before we go to Item No. 3, I'd

5 like to present the proposed consent calendar. And the

6 proposed consent calendar consists of the following

7 items: Under "Adoption of Proposed Statements of

8 Decision," Item 6, animal adoption test claim; Item 7,

9 emergency apportionments test claim; Item 8, mentally

10 disordered offenders' extended commitment proceedings

11 test claim; Item 9, extended commitment Youth Authority

12 test claim; Item 10, elder abuse law enforcement

13 training test claim.

14 It also consists of adoption of proposed

15 parameters and guidelines for Item 11, financial and

16 compliance audits, and adoption of statewide cost

17 estimate, Item 14, for the school bus safety II test

18 claim.

19 And lastly it includes Item 15, adoption of the

20 2001 rulemaking calendar. We have not heard from any of

21 the parties up to now that there's any desire to oppose

22 the consent calendar.

23 CHAIRPERSON PORINI: Do any of the members wish

24 to move the consent calendar?

25 MR. BELTRAMI: Madame Chair, I just want to --

1 Items 12 and 13 are not on consent?

2 MS. HIGASHI: No. Those items have been --

3 County Treasury Oversight Committees has been postponed,

4 and Item 13 has been canceled.

5 CHAIRPERSON PORINI: Okay. So we'll take up the

6 consent calendar at this point in time.

7 MR. SHERWOOD: Move for approval.

8 MS. STEINMEIER: Second.

9 CHAIRPERSON PORINI: We have a motion and a

10 second to approve the consent calendar. All those in

11 favor indicate with "aye."

12 MULTIPLE SPEAKERS: Aye.

13 CHAIRPERSON PORINI: Opposed?

14 It carries unanimously.

15 So we'll move on then to Item No. 3.

16 MS. HIGASHI: Item No. 3 is the test claim on

17 Employee Benefits Disclosure.

18 Before we start with this item, I'd like for all

19 the witnesses and representatives for all of the

20 remaining items, Items 3, 4, and 5, to please stand,

21 raise their hands for the swearing of witnesses.

22 Do you solemnly swear or affirm that the

23 testimony which you're about to give is true and correct

24 based upon your personal knowledge, information, or

25 belief?

1           MULTIPLE SPEAKERS:  (Various responses.)

2           MS. HIGASHI:  Thank you.

3           CHAIRPERSON PORINI:  Will our witnesses come

4 forward, please.

5           MS. HIGASHI:  Staff counsel, Sean Avalos, will

6 present this item.  Have all of you seen his birth

7 announcement?

8           CHAIRPERSON PORINI:  I forgot to mention we got

9 this fabulous candy bar that has the name Faith Caroline

10 Avalos.  Would you like to tell us anything, Sean?

11          MR. AVALOS:  I'm a new dad.  This is my first

12 daughter, a beautiful baby girl.

13          CHAIRPERSON PORINI:  Congratulations.

14          MR. AVALOS:  The test claim legislation requires

15 school districts and county offices of education to

16 disclose information regarding the funding of employee

17 benefits when providing retirement health and welfare

18 benefits to their employees, self-insuring workers'

19 compensation claims, or revising budgets due to new

20 collective bargaining agreements.

21          This test claim was originally presented to the

22 Commission on November 30th.  The Commission continued

23 this item for staff to address the following two issues:

24 Is Education Code section 42140, as it applies to

25 contracts entered into on or after the effective date of

1 the test claim legislation that offer health and welfare  
2 benefits to retired employees, subject to  
3 article XIII B, section 6 of the California  
4 Constitution?

5 Issue 2, does the requirement imposed by the  
6 test claim legislation to produce an actuarial report  
7 prepared by a member of the American Academy of  
8 Actuaries every three years constitute a new program or  
9 higher level of service, or are school districts already  
10 required under the State Controller's Audit Guide to  
11 produce the actuarial report?

12 As to the first issue, staff finds that  
13 Education Code section 42140 is not subject to  
14 article XIII B, section 6, of the California  
15 Constitution for school districts providing health and  
16 welfare benefits to retired employees for the first time  
17 on or after the effective date of the test claim  
18 legislation. As a result, school districts are not  
19 entitled to state subvention for the disclosure of costs  
20 associated with health and welfare benefits provided on  
21 or after the test claim legislation's effective date.

22 As to the second issue, staff finds that the  
23 State Controller's Audit Guide does not require school  
24 districts to produce an actuarial report prepared by a  
25 member of the American Academy of Actuaries. Instead,

1 the State Controller's Audit Guide merely suggests  
2 school districts and county offices of education produce  
3 an actuarial report. Accordingly, the test claim  
4 legislation's requirement to produce an actuarial report  
5 constitutes a new program or higher level of service and  
6 imposes costs mandated by the State.

7 Therefore, staff recommends that the Commission  
8 partially approve this test claim for the activities  
9 listed on page 6 of the supplemental staff analysis.

10 Will the parties please state your names for the  
11 record.

12 MR. PETERSEN: Keith Petersen representing  
13 Clovis Unified School District.

14 MR. BELL: Jeff Bell, Department of Finance.

15 CHAIRPERSON PORINI: All right. Mr. Petersen,  
16 would you like to begin.

17 MR. PETERSEN: Well, good morning. I'll start  
18 off on a positive note. The supplemental staff analysis  
19 conducted by staff is consistent with how this  
20 Commission has made decisions on those issues in the  
21 past, and I don't think it would be productive for -- or  
22 a good use of our time for me to make arguments that  
23 you've already decided over the last couple years  
24 regarding discretionary costs and things like that, so  
25 I -- I can agree with the supplemental staff analysis

1     because it is consistent with what this Commission has  
2     been doing.

3             I do want to take a moment and revisit the issue  
4     of workers' compensation, which was the main body of  
5     analysis on November 30th. That's still a live issue  
6     since no decision was made on the test claim yet. I  
7     once again want to draw a distinction, if I can,  
8     regarding the discretionary cost issues for workers'  
9     compensation from the way the Commission staff -- the  
10    Commission has been deciding the discretionary issue in  
11    the past.

12            The discretionary issue essentially says that at  
13    some point if the agency makes a choice, any costs  
14    incurred after that are not reimbursable. That's a  
15    simplification. That derives from a court case more  
16    than ten years old called the City of Merced. In that  
17    case the City of Merced wanted to build a public  
18    building, and they condemned some commercial property.  
19    They asked to be reimbursed for some of the condemnation  
20    costs, and the court decided that they had several ways  
21    of obtaining land for public buildings. They chose to  
22    do the combination route, and they were not reimbursed.

23            In this test claim on the workers' compensation  
24    issue, the law requires public agencies and other  
25    employers to have workers' compensation coverage, either

1 buying a policy from a company or buying a policy from  
2 the State or self-insuring and buying a catastrophic  
3 coverage. There's several ways to get coverage, I am  
4 told, for workers' compensation, which you are required  
5 by law to obtain workers' compensation. It's a mandate.  
6 It's not a mandate subject to reimbursement because it  
7 applies to all businesses. But nonetheless it's a  
8 mandate to have workers' compensation.

9           Several years after that mandate was in place,  
10 that legal requirement for workers' compensation, this  
11 section came along, said if you've got -- if you're  
12 self-insured and you're a school district, you've got to  
13 have an actuarial report. And the Commission staff's  
14 position is because you chose to be self-insured, that  
15 subsequent new law is not reimbursable. I'm saying this  
16 is different from the origins of the discretionary test.

17           The school district did not choose to obtain  
18 workers' compensation insurance. They had to have it.  
19 They just selected the method. So therefore I think  
20 it's different from the historical basis for the  
21 Commission staff's discretionary test, and I think it  
22 should be reimbursable.

23           CHAIRPERSON PORINI: Okay. Staff comments?

24           MR. AVALOS: I think Keith did -- the claimant  
25 did a good job of reviewing the historical facts of this

1 test claim, but staff still stands by its recommendation  
2 that they did have a choice to self-insure or to seek  
3 insurance in that choice, which made it discretionary  
4 and therefore not reimbursable.

5 CHAIRPERSON PORINI: All right. Mr. Bell.

6 MR. BELL: Thank you, Madame Chair. If I could,  
7 I'll just take them in the -- the issues in the order  
8 that they were just presented.

9 First, on the revised or the supplemental staff  
10 analysis, it is -- just to briefly review what we said  
11 at the last hearing -- our position that a program must  
12 be state-mandated in order for it to generate a  
13 state-mandated cost. And we believe this point is key  
14 to determining whether a program has reimbursable state  
15 mandates.

16 We agree with the CSM staff's assertion in the  
17 January 12th, 2001 supplemental letter that the  
18 provision of health benefits for retirees over the age  
19 65 is not required in state law. However, we disagree  
20 that any of the costs associated with this claim are  
21 state-mandated costs since the provision of the benefits  
22 is allowed but not required by state law. If the  
23 district has provided health benefits to retired  
24 employees over the age 65, then that's a choice at the  
25 district level and was not required, thus the reporting

1 requirements associated with providing these optional  
2 benefits packages are not mandates, rather they are the  
3 notices and rules that districts must follow if they  
4 provide this optional benefits package.

5           And we don't believe that a legislative change  
6 resulting in reporting requirements for an optional  
7 program would somehow convert those reporting  
8 requirements on the optional program into state-mandated  
9 costs.

10           In the second issue, regarding workers' comp, we  
11 concur with the staff analysis.

12           CHAIRPERSON PORINI: All right. Any staff  
13 comments there?

14           MR. AVALOS: When we reviewed this, we looked  
15 at -- the lynchpin of the analysis for that issue is  
16 good-faith collective bargaining and good-faith  
17 collective bargaining is defined under -- defined as the  
18 totality under the circumstances.

19           And it's one thing to where you're providing  
20 retirement health and welfare benefits where a school  
21 district or county office of education is already  
22 providing target health and welfare benefits and the  
23 school district or county office of education comes  
24 along and says, okay, well these benefits you have been  
25 receiving, you've been relying on receiving for your

1 retirement, we're just going to go ahead and terminate  
2 those to avoid costs associated with the disclosure  
3 reporting.

4           It's another thing for a school district to say  
5 for whatever reasons it has, we're not going to provide  
6 you with retirement health and welfare benefits. I  
7 think that it's -- it's the totality of the  
8 circumstances in a good faith when the two are factually  
9 distinguishable.

10           CHAIRPERSON PORINI: Okay. Questions from  
11 members? Mr. Bell, did you wish to make a comment?

12           MR. BELL: I'd just like to say we don't  
13 disagree that this is an issue that would have to be  
14 addressed by collective bargaining. There's no argument  
15 from us on that. But the mere fact that these benefits  
16 would have to be addressed by collective bargaining,  
17 again, doesn't turn those benefits, those optional  
18 benefits, into a state mandate. That just means they'd  
19 have to be addressed through the collective bargaining  
20 process.

21           CHAIRPERSON PORINI: So, Mr. Bell, if I  
22 understand your argument, your argument is that the  
23 actuarial report or any reporting requirements are, I  
24 think, in the -- in our staff analysis, it's a  
25 consequential -- a downstream or a consequential

1 activity.

2 MR. BELL: That is correct. That is correct.

3 CHAIRPERSON PORINI: All right. Mr. Petersen.

4 MR. PETERSEN: That is -- the downstream issue  
5 is the standard review process, the City of Merced  
6 issue. But what staff found compelling was that these  
7 benefits were collectively bargained and collectively  
8 bargaining -- collective bargaining is a state mandate.  
9 And that collective bargain -- collectively bargained  
10 agreement was a contract, and a contract is enforceable  
11 by both parties. And the contract was in force before  
12 the law, and the law should not impair contracts. I  
13 believe that was the cornerstone argument.

14 MR. AVALOS: Well, to add to that, if they were  
15 to terminate those benefits without going through the  
16 collective bargaining process, they would be liable for  
17 unlawful practices, and therefore it's staff's  
18 recommendation that therefore it's required of them, and  
19 that meets the definition of a mandate.

20 CHAIRPERSON PORINI: Questions or comments?  
21 Ms. Steinmeier.

22 MS. STEINMEIER: I'd just like to comment and I  
23 want to thank Sean for going back and looking at this  
24 again.

25 The practical reality, Mr. Bell, is once a

1 contract's in place, the school district rarely is able  
2 to take back the benefits once they're there. And this  
3 is something -- I guess it's unfortunate that the makers  
4 of the new legislation didn't recognize that it would --  
5 requiring an actuarial report from an actuary was  
6 actually going to create this situation. But that's --  
7 as a practical matter, good-faith bargaining, you cannot  
8 remove benefits, especially something like that. This  
9 is a hard-fought benefit, although not all school  
10 districts in California do offer it.

11 I also agree with Sean's analysis that districts  
12 who add this benefit after the date of the legislation  
13 then are going to have to themselves cover the cost of  
14 the actuarial report. I think that's -- that makes good  
15 sense to me.

16 On the workers' comp issue, I don't recall  
17 spending a lot of time in our previous session on this.  
18 We really didn't talk about it much. So this for me is  
19 sort of new ground. But I do agree with Mr. Petersen  
20 that workers' comp is different than a benefit that a  
21 school district decides to give to its employees. There  
22 is no option about providing workers' comp, it's only a  
23 matter of how you provide it. And I think that's  
24 basically a business decision, what's the most practical  
25 way.

1           And if I -- if I read Sean's analysis correctly,  
2   if you decide to go self-insured and you're going to  
3   have to add in the cost of an actuarial report as a part  
4   of doing business, then it might not be the best  
5   solution for you, depending on what the cost of that is.  
6           So I agree with the staff analysis.  
7           CHAIRPERSON PORINI: Okay. Other comments?  
8   Questions? Okay. Do I have a motion?  
9           MR. LAZAR: I move the staff analysis, the  
10  adoption of the staff analysis.  
11          CHAIRPERSON PORINI: Do I have a second?  
12          MR. SHERWOOD: I'll second that.  
13          CHAIRPERSON PORINI: Okay. I have a motion and  
14  a second. May I have -- is there --  
15          MS. HIGASHI: May I just -- may I just clarify?  
16  We're talking about the staff analysis and  
17  recommendation that is in the supplemental prepared for  
18  this hearing?  
19          MR. LAZAR: Yes.  
20          CHAIRPERSON PORINI: Right. Roll call.  
21          MS. HIGASHI: Are you ready for roll call?  
22          Mr. Beltrami.  
23          MR. BELTRAMI: Yes.  
24          MS. HIGASHI: Mr. Harigan.  
25          MR. HARIGAN: Yes.

1 MS. HIGASHI: Ms. Halsey.  
2 MS. HALSEY: No.  
3 MS. HIGASHI: Mr. Lazar.  
4 MR. LAZAR: Yes.  
5 MS. HIGASHI: Mr. Sherwood.  
6 MR. SHERWOOD: Yes.  
7 MS. HIGASHI: Ms. Steinmeier.  
8 MS. STEINMEIER: Yes.  
9 MS. HIGASHI: Ms. Porini.  
10 CHAIRPERSON PORINI: No.  
11 All right. Motion carries.  
12 Let's go on to Item No. 4.  
13 MS. HIGASHI: Item 4 is the test claim hearing  
14 for Firearms Prohibition Signs. This item will be  
15 presented by staff counsel Kathy Lynch.  
16 MS. LYNCH: This test claim addresses Penal Code  
17 section 626.9, subsections (h) and (i), which requires  
18 both public and private colleges and university to post  
19 firearm prohibition notices at primary entrances on  
20 noncontiguous campus property. The test claim statute  
21 specifies that signs must state that firearms are  
22 prohibited on that property.  
23 Claimant contends that the test claim statute is  
24 a program because it relates to the peculiarly  
25 governmental function of education. Staff disagrees and

1 finds that the statute is not a program because it  
2 merely provides notice of the prohibited criminal  
3 conduct to all individuals who are on -- who are on  
4 noncontiguous property of colleges and universities as  
5 illustrated in the statute's legislative history.

6 Further, staff finds that the test claim statute  
7 is not a program because it does not impose unique  
8 requirements upon community colleges, rather, it applies  
9 equally to both public and private colleges and  
10 universities.

11 Accordingly, staff finds that the test claim  
12 statute is not subject to article XIII B, section 6, of  
13 the California Constitution because it does not carry  
14 out the governmental function of providing services to  
15 the public or impose unique requirements on local  
16 governments that do not apply generally to all residents  
17 and entities in the state. Staff therefore recommends  
18 that the test claim be denied.

19 Will the parties and witnesses please state your  
20 name for the record.

21 MR. PETERSEN: Keith Petersen, representing the  
22 State Center Community College District.

23 MR. BELL: Jeff Bell, Department of Finance.

24 CHAIRPERSON PORINI: All right. Mr. Petersen,  
25 would you like to begin.

1           MR. PETERSEN: Thank you.

2           Staff is recommending denial of reimbursement  
3 for several reasons. First of all, they do not believe  
4 it's a program within the definition of article XIII B 6  
5 of the Constitution, and they do not believe it's a  
6 program within the definition of the County of Los  
7 Angeles, which is a threshold case for us. And although  
8 they did not provide analysis in the staff analysis,  
9 they do not believe Long Beach is controlling.

10          To refute that, I'd have to reference two  
11 paragraphs in Long Beach. They're on 145 of your  
12 documents. First, I'd like to say there is another  
13 college test claim scheduled for hearing next month  
14 called Campus Safety Plans, and Commission staff has  
15 recommended adoption of one component dealing with  
16 school safety police officers and their --

17          MS. HIGASHI: May I interrupt you for a moment?  
18 The draft staff analysis on that test claim has been  
19 issued, and it has been set for hearing next month. It  
20 is not before you at this time.

21          MR. PETERSEN: All right.

22          CHAIRPERSON PORINI: All right.

23          MS. HIGASHI: There are no documents regarding  
24 that test claim in this record.

25          CHAIRPERSON PORINI: All right. So,

1 Mr. Petersen, would you not discuss the future test  
2 claim at this point in time, since we have nothing  
3 before us. We haven't seen it. We haven't had any  
4 discussion of it.

5 MR. PETERSEN: Okay. Without discussing its  
6 contents, then I'll continue what I was going to say,  
7 and that is because it was decided differently than this  
8 case using the same law and using essentially the same  
9 factual circumstances, I would like to suggest that this  
10 test claim be heard on the same date so that you can  
11 contrast and compare why the two decisions are  
12 different. I believe it's admissible for me to point  
13 out the decisions are different.

14 CHAIRPERSON PORINI: Staff, comments?

15 MS. LYNCH: Staff is prepared to move forward  
16 with this case, and we have completed our analysis.  
17 Obviously we can't talk about an item that's not on the  
18 agenda, so I can't respond to Mr. Petersen's comments,  
19 but we certainly are ready, prepared, and have completed  
20 this analysis, and would like to move forward, but  
21 whatever the Commission would like.

22 CHAIRPERSON PORINI: I'm prepared to move  
23 forward.

24 All right. Mr. Petersen, any comments?

25 MR. PETERSEN: Well, I'm prepared to move

1 forward also, but I thought there was an opportunity  
2 there for us to have a learning process regarding how  
3 the staff analyses are prepared. Well, I'll continue  
4 anyway. Obviously I'm concerned about historical  
5 consistency, and my attempt for perspective consistency  
6 wasn't too successful there.

7 Looking at page 145, this is a citation from the  
8 Long Beach case, which along with the County of Los  
9 Angeles case is a threshold case for school  
10 reimbursement. The first sentence of the quote at the  
11 bottom says, "In relevant part article XIII B, section  
12 6, of the Constitution states, 'Whenever the legislature  
13 or any state agency mandates a new program or higher  
14 level of service on any local government, the State  
15 shall provide subvention.'" That's the mandate  
16 reimbursement.

17 So first you need to recognize that that's not a  
18 two-part test. Those are alternative tests. The first  
19 test is whether it's a new program, and the second  
20 alternative test is whether it's a higher level of  
21 service on local government. It's important to  
22 understand that because often staff analysis treats it  
23 as a two-part test, that both legs have to be fulfilled.

24 Moving on to the next page -- oh, excuse me,  
25 hang on. Moving on to the next page, the first full

1 paragraph, it says, "In the instant case, although  
2 numerous private schools exist, education in our society  
3 is considered to be a particularly governmental  
4 function. Further, public education is administered by  
5 local agencies to provide a service to the public.  
6 Public education consists of a program within the  
7 meaning of section 6."

8           So according to the Long Beach case, mandates  
9 relating to public schools are considered programs. So  
10 they satisfy the first leg of that test. They don't  
11 have to satisfy the second leg of the test, and that is  
12 higher level of service, as long as there is a new  
13 program.

14           The second reason the staff turned down  
15 reimbursement is it did not impose unique requirements  
16 upon community colleges because it applied to private  
17 colleges and universities. The Long Beach case says  
18 that's irrelevant because public education is a uniquely  
19 public program. So the staff analysis is incorrect with  
20 that conclusion.

21           The staff analysis introduces a new standard  
22 that hasn't existed in any Commission decision in the 11  
23 years I've been doing this and the 20 years I've been --  
24 the 20 years' of cases I've been exposed to. The staff  
25 invents a test called educational services. That test

1 does not exist anywhere in the legislation or the law.  
2 They say this is not reimbursable because it doesn't  
3 pertain to teaching or school finance.

4           If you look at page 147, I've listed in my  
5 rebuttal about a dozen mandates approved by this  
6 Commission in the last dozen years or so that have  
7 nothing to do with education under the Commission  
8 staff's new definition. Collective bargaining is not  
9 educational. Pupil suspensions, expulsions, and appeals  
10 is not education. Absentee ballots is not education.  
11 The list goes on.

12           If you look down, it says juvenile court  
13 notices, law enforcement agency notifications, teacher  
14 notifications, and school crimes reporting are not  
15 educational but they're reimbursable, and they're very  
16 much like the mandate before us. The mandate before us  
17 is to put a sign up and notify people that guns are not  
18 allowed on college campuses as a matter of student and  
19 community safety. Juvenile court notices, law  
20 enforcement agency notices, teacher notifications are a  
21 matter of safety for school staff.

22           So factually this Commission has adopted several  
23 test claims that pertain to staff and student safety.  
24 The new -- the proposed test, educational, does not  
25 apply because it doesn't exist in law.

1           The test, as we just saw, is providing a  
2   service, a public service. School districts perform  
3   something called scoliosis screening whereby they  
4   examine 7th and 8th grade -- 7th grade girls and 8th  
5   grade boys for spinal deformities. It's a very  
6   important service. The State requires that we do that  
7   because that's where the kids are. It's a very  
8   convenient way for the State to have that service  
9   performed.

10           And laypeople can be trained to examine students  
11   and they have a particular device they use to measure  
12   the -- I guess the concavity of the spine, and it's a  
13   fairly straightforward process. If the employee  
14   suspects there might be some scoliosis starting, they  
15   refer the child to the nurse, who refers them to a  
16   doctor.

17           That's not education. That's a service --  
18   that's a public service provided by the school district,  
19   again, because -- and it works out well because that's  
20   where the children are.

21           There are many, many mandates we have that we do  
22   because that's where the children are. First-graders,  
23   we screen them for immunizations. You can't come to  
24   school until you're immunized. Health and safety.

25           So the education -- the new proposed educational

1 test doesn't work, and there's no legal basis for that  
2 suggestion.

3 The uniqueness to colleges, that doesn't work  
4 because Long Beach says it doesn't work. So what has  
5 happened here is we have a staff recommendation that's  
6 gone out in some new areas with no legal underpinning  
7 and is -- and is contrary to past practices for these  
8 types of decisions by this Commission.

9 CHAIRPERSON PORINI: Staff?

10 MS. SHELTON: I would like Kathy to respond to  
11 the substantive issues, but I just wanted to clarify  
12 that the Long Beach case is not a Supreme Court case.  
13 It was issued by the Court of Appeals Second Appellate  
14 District.

15 MR. PETERSEN: And hearing denied by the Supreme  
16 Court.

17 CHAIRPERSON PORINI: Ms. Lynch.

18 MS. LYNCH: I'm going to address the issues as  
19 they were presented. First, let's look at more of the  
20 historical context.

21 If you look at prior test claims, the Commission  
22 would like us to go through all of them. We certainly  
23 could, but every test claim is based on a certain set of  
24 facts. In this case, firearms prohibition was based on  
25 a legislative history that told us that the whole intent

1 of this statute was to provide criminal -- notice of  
2 criminal conduct to everybody, not students, everybody.

3 But on that note, there are prior test claims,  
4 one particularly, Minimum Higher Tread, where the  
5 Commission adopted a fairly similar, in fact, almost  
6 identical analysis that was done in this case that dealt  
7 with tires and minimum amount of tread they had to have  
8 on school buses, and the Commission did deny that test  
9 claim. So I don't think it's helpful in this situation  
10 to look back at what decisions have been done or have  
11 been made, because they rely on specific facts.

12 So moving down to County of L.A., if you look at  
13 the analysis, there is a two-prong test, and staff did  
14 address both prongs. First, as to the governmental  
15 function, as I've said, if you look at the legislative  
16 history -- and this one, there was quite a bit of detail  
17 in there -- it tells you that they were concerned or  
18 Assemblyperson Lambert -- or Lember -- Lambert was  
19 concerned --

20 CHAIRPERSON PORINI: Lambert.

21 MS. LYNCH: Thank you -- about people knowing  
22 that it is against the law to have firearms on campus.  
23 Because if you, for instance, live in student dorms, you  
24 may think you have a right to bear arms because it's  
25 your home. So it was very important people knew that.

1           Even if you have a gun in the back of your  
2   vehicle, as long as it's legal to be there, if you're on  
3   a campus, you can't have it. And when you get into  
4   universities such as UCLA and that sort of environment  
5   where it's spread out, it's difficult to determine where  
6   one part of the campus starts and one part of it ends.  
7   So the whole point was to put everybody on notice of  
8   criminal conduct.

9           As far as the unique portion of the test, we  
10   also covered that. And it simply isn't unique in the  
11   sense that I think I pulled up the colleges and  
12   universities in California, and there's about 555 of  
13   them. Only about 150 are public, and everything else is  
14   private.

15          As far as the Long Beach case is concerned, it  
16   is in our analysis and was given a great deal of  
17   consideration. It just simply is not relevant. There  
18   is no program analysis in Long Beach. When you look at  
19   County of Los Angeles -- when you look at County of  
20   L.A., the elevator case, and when you look at other  
21   cases, the court tells us you have to analyze  
22   programming. And that's what I did in this case. And  
23   Long Beach, there's no analysis of programming. It's  
24   just the conclusion that it's education, so therefore  
25   they move on with higher level of service. So again, we

1 did look at that case, Long Beach, and found it wasn't  
2 relevant to the case at hand.

3 CHAIRPERSON PORINI: Questions from members?

4 MR. LAZAR: Can I ask a question?

5 CHAIRPERSON PORINI: Mr. Lazar.

6 MR. LAZAR: Concerning a point of information,  
7 is there any information pertaining to a rental  
8 agreement or lease agreement in a public forum that  
9 posted or notified renters that they weren't to have  
10 firearms?

11 MS. LYNCH: Previously, I think it was -- this  
12 law was '98, but I think previously in '96 or '94  
13 there's actually a subdivision in the statute that said  
14 it was up to the individual to know and we were not  
15 going to post any type of notice. So I don't have any  
16 information on whether, for instance, flyers or  
17 something were sent out. But prior to that, I believe  
18 it's subdivision (k) of the statute said no notice is  
19 required to be posted.

20 MR. LAZAR: Mr. Petersen, would you --

21 MR. PETERSEN: Yeah, the question you asked  
22 pertains to the rights of students living on campus.  
23 The posting requirement is notice to the public and all  
24 people who cross the campus or use the facilities. The  
25 background work they did regarding the NRA's concerns

1 about public possession might address those people  
2 living in the dorms, but it doesn't address the broader  
3 mandate, which is notice to the entire world that you  
4 cannot bring a firearm onto the college campus --  
5 college properties noncontiguous to the campus, excuse  
6 me.

7 CHAIRPERSON PORINI: Ms. Higashi.

8 MS. HIGASHI: I wanted to just add another  
9 historical perspective. If you look at the list of test  
10 claims that are cited, it's very difficult for staff,  
11 even if the Commission were an agency that looked at  
12 precedential decisions and then based its decisions on  
13 precedent, because some of these cases are cases that  
14 have decisions that are regarded as brief statements of  
15 decision which are just kind of one-sentence,  
16 one-liners. Some have been issued by the Board of  
17 Control, and the others were issued by the Commission at  
18 various points during the Commission's history. Also  
19 there's the additional overlay of different case law at  
20 which point in time theses decisions were issued.

21 So when you're looking at this case today, staff  
22 did look at it from the perspective of how the  
23 Commission staff is doing its legal analysis today.

24 CHAIRPERSON PORINI: All right. Other --  
25 Mr. Petersen.

1           MR. PETERSEN: I have a -- I can respond to  
2   that -- that problem she's addressed. I prepared the  
3   test claims on most of those, and I guess you could call  
4   me an expert on it if you have any questions.

5           CHAIRPERSON PORINI: Other questions or  
6   comments? Mr. -- oh, Ms. Steinmeier.

7           MS. STEINMEIER: A couple of comments. I do  
8   actually agree with Mr. Petersen on this educational  
9   function test, because even in my short time on the  
10   Commission, we've done a number of test claims right  
11   here, actually when many of you were here, that were not  
12   uniquely educational. So that argument does not move  
13   me.

14          The argument that moves me is that it applies to  
15   both public and private schools and that -- that's the  
16   problem. There are not a lot of private colleges and  
17   universities out there that are also affected by this,  
18   and so I am moved by that argument as being a threshold  
19   question that it doesn't apply.

20          CHAIRPERSON PORINI: All right. Mr. Bell.

21          MR. BELL: We concur with the staff analysis.

22          CHAIRPERSON PORINI: Any other comments,  
23   questions?

24          MR. SHERWOOD: I would just like to indicate I  
25   agree with Ms. Steinmeier's comments.

1           CHAIRPERSON PORINI: Do I have a motion?

2     Mr. Petersen.

3           MR. PETERSEN: May I? Yeah, I'd like to provide

4     a clarification for Member Steinmeier. The other

5     private schools -- and actually it was dealt with in the

6     Long Beach case, notwithstanding the fact that there are

7     lots of private schools. It doesn't disqualify public

8     education as being a quote/unquote program. There are

9     probably more private -- I don't have any backup on

10    that. There are probably a lot of private schools for

11    K-12, and there are a lot of private colleges. And the

12    Ed. Code makes community colleges part of the public

13    school secondary system, and that's section 66700. So

14    that brings it, I believe, into Long Beach. And the

15    number of private colleges is no longer an issue in the

16    legal analysis.

17           CHAIRPERSON PORINI: Ms. Lynch.

18           MS. LYNCH: Just for some clarification on Long

19    Beach, it did deal with elementary schools, not

20    secondary education. And again, in this situation they

21    had already concluded that a program existed.

22           MR. PETERSEN: Long Beach is a unified school,

23    grades K through 12.

24           CHAIRPERSON PORINI: Okay. Further questions

25    from members? Do I have a motion?

1           MR. LAZAR: I'll move the test claim.

2           CHAIRPERSON PORINI: All right. Do I have a  
3 second?

4           MS. HALSEY: Second.

5           CHAIRPERSON PORINI: I have a motion and a  
6 second.

7           MS. HIGASHI: Clarification, your motion is to  
8 adopt the staff analysis?

9           MR. LAZAR: To adopt the staff analysis. I'm  
10 learning things, I'm sorry. I'm still a freshman.

11          CHAIRPERSON PORINI: All right. So we have a  
12 motion and a second. Is there any discussion?

13          Hearing none, may I have roll call.

14          MS. HIGASHI: Mr. Harigan?

15          MR. HARIGAN: I'm sorry, I need a clarification  
16 of the motion.

17          MS. HIGASHI: The motion is to adopt the staff  
18 recommendation which would deny --

19          MR. LAZAR: No. No, I apologize. I wanted to  
20 move the claimant's position.

21          MS. HIGASHI: Okay.

22          CHAIRPERSON PORINI: Oh, okay.

23          MS. HALSEY: I was seconding your --

24          MR. LAZAR: I withdraw the motion. I apologize.

25          CHAIRPERSON PORINI: All right.

1 MS. HALSEY: I'll withdraw the second.

2 CHAIRPERSON PORINI: So the second has been  
3 withdrawn, and the motion has been withdrawn. So is  
4 there anyone who wishes to make another motion?

5 MR. BELTRAMI: Madame Chair.

6 CHAIRPERSON PORINI: Mr. Beltrami.

7 MR. BELTRAMI: May I ask a question --

8 MR. LAZAR: I'm sorry, thank you.

9 MR. BELTRAMI: -- a clarification. Your  
10 position, Mr. Petersen, is that anything dealing with  
11 all schools throughout the state, public and private,  
12 that it's all education in your mind and therefore --

13 MR. PETERSEN: No, there are cases --

14 MR. BELTRAMI: -- no distinction --

15 MR. PETERSEN: There are some cases that make a  
16 distinction. Although Commission staff cited the  
17 history the tire tread incorrectly, the decision on tire  
18 tread was controlled by an Attorney General's opinion  
19 after this Commission initially approved it, and then  
20 the Attorney General's opinion came out. Then the  
21 Commission reversed its position. Their argument was  
22 that there are buses and buses everywhere, and this is  
23 an increased cost. You've always had tires on the bus,  
24 okay.

25 The industrial relations case is elevators and

1 elevators and elevators, and providing an elevator is  
2 not a government service. It's part of the building.  
3 That's the case cited by staff.

4 This case is different because no one's ever had  
5 to post signs. It's a new service to post signs.

6 MR. BELTRAMI: I'm still not convinced that  
7 there is -- that it isn't -- that it's not a unique  
8 situation. If we have -- if we have Stanford putting up  
9 these signs as well as UC Berkeley, then it's covering  
10 public and private. It's covering everybody.

11 MR. PETERSEN: Right. And in the Long Beach  
12 case it dealt with that issue. There are private  
13 schools K-12, but that doesn't hinder the mandate from  
14 being approved for public education because it's a  
15 uniquely governmental service.

16 I understand your concern that everybody puts  
17 signs up. Well, not everybody puts signs up about  
18 firearms. That's a unique requirement for college  
19 campuses. But that's where the analysis ends, is that  
20 it's a new service. If you don't believe it's a service  
21 and it's an elevator or a bus tire, your position should  
22 prevail, but I don't think posting signs is a bus tire  
23 or an elevator.

24 CHAIRPERSON PORINI: Ms. Steinmeier.

25 MS. STEINMEIER: The Long Beach case was about

1     desegregation.

2             MR. PETERSEN:   Yes, ma'am.

3             MS. STEINMEIER:   So explain to me why that would  
4     apply to private institutions.

5             MR. PETERSEN:   I don't know.   That was an  
6     argument by the Department of Finance that they lost  
7     several times in several cases.

8             MS. STEINMEIER:   Well, I don't see the  
9     relevance, so you need to help me.

10            MR. PETERSEN:   Well, the County of Los Angeles  
11     case is two-legged.   Article XVI B is two-legged.   One  
12     leg gets you to County of Los Angeles, which is a new  
13     program or a service unique to government.   And the  
14     Department of Finance has several times made the  
15     argument in court that since there are private schools,  
16     it's impossible for public education to be unique.

17            And even after the Long Beach case, they  
18     persisted, and they do it in their documents here  
19     occasionally.   By waving the flag that there are private  
20     schools, they say there's no way school programs can be  
21     reimbursable because nothing would ever be unique to  
22     schools.   All 40 mandates approved for reimbursement  
23     would not apply because public education is not --  
24     education is not unique to public schools.

25            MS. STEINMEIER:   I understand that.

1           MR. PETERSEN: The whole -- the whole mandate  
2 process falls apart if you buy that argument.

3           MS. STEINMEIER: Right. Nothing should be  
4 mandated.

5           MR. PETERSEN: Nothing would be reimbursed for  
6 schools.

7           MS. STEINMEIER: I think this is different. I  
8 think it's different because -- because the legislation  
9 is very specific about it. It applies to public and  
10 private schools and so I -- we're kind of going around  
11 in a loop here. And I still don't see the relevance of  
12 the Long Beach case specifically to this one. I can't  
13 make that connection.

14          MR. PETERSEN: Well, the issue with uniqueness  
15 is the second leg of the two-pronged -- excuse me, of  
16 the two alternative tests. The Commission staff treats  
17 it as a two-prong test that you have to meet both parts.

18          MS. STEINMEIER: Right. Both. I don't --

19          MR. PETERSEN: The County of Los Angeles and the  
20 article XVI B are alternative tests, new program, higher  
21 level of service. Article XIII B 6, County of Los  
22 Angeles, new program or cost unique to government. If  
23 you meet the new program test in XIII B 6 and you meet  
24 the new program test in County of Los Angeles, you never  
25 get to that uniqueness test.

1 MS. STEINMEIER: Oh, I see what you're saying.

2 CHAIRPERSON PORINI: All right. Ms. Lynch.

3 MS. LYNCH: Staff did not treat it as an or --

4 or I'm sorry, as an and. It's or. They are two

5 different tests. We analyzed both of them to have a

6 complete analysis for everyone. So the position in the

7 staff analysis is that it is not unique, but in addition

8 it does not provide a governmental function of providing

9 services to the public. So under either test it is not

10 a program, therefore not subject to article XIII B.

11 MR. PETERSEN: I'd like to respond to that.

12 CHAIRPERSON PORINI: All right. Mr. Petersen.

13 MR. PETERSEN: In order to make both choices

14 fail, staff created that educational services test for

15 programs. And I can't see anything but chalk and

16 teachers' salaries passing that test, can you? So if

17 you can't pass that test, you don't need to go to the

18 next test and fail the second test.

19 Long Beach says that we pass the first test. No

20 need to go to the second test. But I have to point out

21 in order to fail us on both tests, they had to create a

22 new rule that you folks have never used before, and

23 that's educational services.

24 CHAIRPERSON PORINI: All right. Ms. Halsey.

25 MS. HALSEY: I'd like to make a motion to adopt

1 the staff analysis.

2 CHAIRPERSON PORINI: All right. We have a

3 motion to adopt staff analysis.

4 MR. SHERWOOD: I'll second that motion.

5 CHAIRPERSON PORINI: We have a second. Is there

6 any further discussion?

7 All right, may I have roll call.

8 MS. HIGASHI: Ms. Halsey.

9 MS. HALSEY: Aye.

10 MS. HIGASHI: Mr. Lazar.

11 MR. LAZAR: No.

12 MS. HIGASHI: Mr. Sherwood.

13 MR. SHERWOOD: Aye.

14 MS. HIGASHI: Ms. Steinmeier.

15 MS. STEINMEIER: No.

16 MS. HIGASHI: Mr. Beltrami.

17 MR. BELTRAMI: You finally got to me there.

18 CHAIRPERSON PORINI: Would you like us to come

19 back to you?

20 MR. BELTRAMI: Yes, would you, Madame Chair?

21 CHAIRPERSON PORINI: All right.

22 MS. HIGASHI: Mr. Harigan.

23 MR. HARIGAN: Aye.

24 MS. HIGASHI: Mr. Beltrami.

25 MR. BELTRAMI: Aye.

1 MS. HIGASHI: Ms. Porini.

2 CHAIRPERSON PORINI: Aye.

3 MS. HIGASHI: Motion carries.

4 CHAIRPERSON PORINI: All right, motion carries.

5 Thank you very much.

6 That takes us to Item No. 5.

7 MS. HIGASHI: This brings us to Item No. 5,

8 proposed statement of decision by administrative law

9 judge. Ms. Shelton will present this item.

10 MS. SHELTON: This items addresses the County of

11 San Diego vs. State of California case which is on

12 remand from the California Supreme Court. The court

13 instructed the Commission on remand to determine whether

14 and by what amount the statutory standards of care

15 forced the County of San Diego to incur costs in excess

16 of the funds provided by the State for the MIA program

17 and to determine the statutory remedies to which San

18 Diego is entitled. The Commission assigned this case to

19 an ALJ to prepare a proposed statement of decision.

20 At the last hearing, the Commission remanded the

21 ALJ's proposed decision back to the ALJ in light of the

22 written comments filed by both parties. Both parties

23 contended that the amount of credit applied by the ALJ

24 to reduce the County's claim was incorrect.

25 The ALJ has submitted a revised decision

1     addressing the arguments of the parties, which is  
2     attached as Exhibit A. The ALJ agrees with the parties  
3     that the allowable credits and offsets identified in the  
4     first proposed decision was incorrect. Thus, the  
5     revised proposed decision reduces the amount of credit  
6     and offsets and amends the total amount of the County's  
7     claim.

8             The ALJ continues to recommend that the  
9     Commission dismiss the County of San Diego claim because  
10    the County has not established that it was compelled to  
11    incur any amount in excess of the funds provided by the  
12    State for the MIA program. Instead, the ALJ still finds  
13    that the economic risk for the medical services program  
14    was transferred to private contract providers and not  
15    borne by the County of San Diego.

16            The ALJ further finds that the County lacks  
17    competent and credible evidence to support its claim for  
18    reimbursement.

19            Staff finds that the revised proposed decision  
20    follows the remand instructions of the California  
21    Supreme Court. Staff notes that the County of San Diego  
22    has identified a calculation error in the revised  
23    decision pertaining to the allowable credits and  
24    disallowable expenses applied by the ALJ to reduce the  
25    County's claim. Using the findings and the number

1 identified by the ALJ, staff agrees there is a  
2 calculation error in the addition of the credits and  
3 expenses on Bates pages 25 and 26.

4 Accordingly, with the two modifications  
5 identified on page 4 of the executive summary to correct  
6 the calculation errors, staff recommends that the  
7 Commission adopt the revised proposed statement of  
8 decision as the Commission's statement of decision.

9 Will the parties please state their names for  
10 the record.

11 MR. BARRY: Timothy M. Barry, Senior Deputy  
12 County Counsel, for County of San Diego.

13 MR. DE LA GUARDIA: Ramon De La Guardia, Deputy  
14 Attorney General for the State of California.

15 CHAIRPERSON PORINI: All right. Mr. Barry, do  
16 you want to begin.

17 MR. BARRY: Thank you.

18 First off, I'd like to thank the Commission for  
19 committing the resources to appoint an ALJ to hear the  
20 evidence and the testimony of this matter that allowed  
21 us to, I think, fully present the issues. Also, I'd  
22 also like to thank your staff for their courtesy and  
23 their assistance in helping me herd this matter through  
24 the Commission. They have always been most helpful.

25 This matter has come to the Commission in sort

1 of a circuitous route in that it's already been up  
2 through the court system. And we now come here after  
3 the Supreme Court has rendered a decision already  
4 finding that the State's obligation to fund the county  
5 CMS program was a state-mandated obligation.

6           Specifically the Supreme Court found that the  
7 State had improperly shifted the responsible for  
8 providing services that the State was obligated to  
9 provide to MIAs to the County. As stated by the court,  
10 it is unquestionably the State that has required San  
11 Diego to provide medical care to indigent persons. The  
12 Supreme Court also found that to the extent the services  
13 met but did not exceed the applicable standard of care,  
14 the County has no discretion to refuse to provide  
15 medical care to indigent persons.

16           On remand, the court in the footnote in its  
17 decision said that the State could argue that the  
18 service -- the scope and nature of the services provided  
19 by the County of San Diego to indigent individuals  
20 exceed the standard of care. And I believe that was the  
21 scope of the remand to the Commission.

22           I'd also like to remind the court -- or the  
23 Commission that when this occurred back in 1990, '91 and  
24 the County was sued, that the superior court issued an  
25 injunction requiring the County of San Diego to continue

1 the services at the level that they had historically  
2 provided the services.

3           So historically what happened was the County of  
4 San Diego was funding the program. It realized it did  
5 not have enough money. The Board of Supervisors voted  
6 to terminate the program. The County got sued. And the  
7 court issued an injunction saying you cannot terminate  
8 the program, and as a matter of fact, you have to  
9 continue to provide the services at the same level that  
10 you've always been providing those services. So we were  
11 under a court order to continue the services at that  
12 level.

13           The other issue I'd like to address, and  
14 specifically this is, of course, dealing with the ALJ's  
15 finding that the County of San Diego wasn't compelled to  
16 spend the money that it spent, is that it was a state  
17 obligation to fund the program. It wasn't a county  
18 obligation to fund the program. And to the extent that  
19 the County had contracts with private providers to  
20 provide the services, it was fulfilling the State's  
21 obligation for those services. And so the -- really the  
22 content of those contracts between the County and the  
23 private providers is not relevant to this proceeding.

24           The fact that the County had a provision in the  
25 contracts with its providers that said if we don't get

1 the funding at the historic levels, we can terminate the  
2 contract, that's the reality of what the County of San  
3 Diego was dealing with back in 1991. So the finding  
4 that we weren't compelled to spend the money, that we  
5 could have paid less or we could not have paid -- or we  
6 could have said we're not going to pay you, we're simply  
7 not going to pay you any more money, private providers  
8 that were providing the services were not obligated to  
9 continue to provide those services to those indigent  
10 individuals.

11 And so it's -- it's really nonsensical to  
12 think -- and it's not based in reality to think that we  
13 could have not funded the program at the level that we  
14 continued to fund the program at.

15 The evidence in the record is that the system  
16 would have collapsed but for the County of San Diego  
17 stepping up to the plate and continuing to fund the  
18 program. Had the system collapsed and the providers  
19 refused to provide services to indigent persons, the  
20 entire burden of that obligation would have fallen upon  
21 the County under it's 17000 obligation to provide  
22 services as a provider of last resort. The burden that  
23 it would have put on the County's limited medical  
24 resources, since we don't have a county hospital, would  
25 have been enormous.

1           So, again, I differ with the ALJ's conclusion  
2   that we really had any discretion as to whether or not  
3   we could continue to fund the CMS program at the levels  
4   that we funded it at.

5           Now, with respect to the specific credits that  
6   the ALJ found the State was entitled to, first let me  
7   address the SLIAG credit. The ALJ found that the State  
8   was entitled to a credit for \$1,398,000 against our  
9   claim by reason of funds received through the State by  
10   the County in the form of SLIAG reimbursement.

11           My understanding is the way the program works is  
12   the County incurs costs, submits those costs to the  
13   State, and then the federal government, through the  
14   State, reimburses the County for those expenses. And I  
15   could understand that if the county CMS program incurred  
16   \$3,598,000 worth of costs, submitted that for  
17   reimbursement, and then took \$1.398 million of that and  
18   spent it on other county programs, then there would be  
19   the legitimate claim for offset that we got moneys that  
20   were expended through the CMS program and then we  
21   diverted those moneys to non CMS county programs.

22           But what the record is -- is that the costs that  
23   were incurred were incurred by non CMS programs that  
24   were funded by county general funds programs -- or  
25   county general funds. So the costs that were incurred,

1 the \$1,398,000 that wasn't spent on the CMS program,  
2 were costs that were incurred by county programs.

3 We submitted a claim for reimbursement, and we  
4 were reimbursed for that money. The money wasn't  
5 diverted from the CMS program. The CMS program was  
6 never entitled to that money. So the credit of  
7 \$1,398,000 is not warranted.

8 Secondly, if you look at the -- one of the  
9 easiest ones, I think, is if you look at page 206, which  
10 is Attachment A to our comments to the revised statement  
11 of decision. The ALJ has given the State a credit for  
12 \$9,713. And if you look at Attachment A on page 206 and  
13 if you -- about two-fifths of the way down the page,  
14 under Item 1.B.5. it says, "Less adjustment to claims  
15 based inpatient outpatient totals to reconcile with  
16 general ledger accounts, \$9,713." We have already  
17 subtracted that number to arrive at the net amount of  
18 our claim. So if you subtract it again, you're  
19 subtracting it twice.

20 The idea that -- the other issue is the -- the  
21 ALJ found that the State is entitled to a credit for  
22 mental health expenditures or CMS funds that were  
23 expended through the county mental health program. I  
24 would point out that the county Short-Doyle obligation  
25 is as to its 17000 population. And the Supreme Court

1 has found that the county's CMS population is separate  
2 and distinct from the county's 17000 obligation. So the  
3 argument that somehow Short-Doyle limits the amount of  
4 money that we have to spend on CMS-eligible -- that we  
5 can spend on CMS-eligible patients and therefore if we  
6 spent more than that it was discretionary does not apply  
7 in this case.

8           The -- the population that was being served  
9 through the mental health program were CMS-eligible  
10 patients. That means that prior to the 1982  
11 legislation, they were eligible to receive those health  
12 care services. And they were eliminated through  
13 Medicare -- from Medicare -- I'm sorry, from Medi-Cal  
14 through the 1982 legislation.

15           I would also point out that Welfare and  
16 Institutions Code section 16704(c)(1) expressly  
17 authorizes the expenditure of funds received under  
18 section 16703(c) and (d), which are the MISA funds that  
19 we're talking about here for mental health services  
20 specified in section 14021.

21           So the legislation specifically authorizes the  
22 County to spend CMS funds for mental health services or  
23 through the mental health program for CMS-eligible  
24 patients, and that's what we did. So the \$2,658,000  
25 credit that the ALJ has given to the State is also not

1 warranted.

2           Finally, I would point out that the County's  
3 SB 900 contract that it has with the State expressly  
4 provided that the County was going to spend those funds  
5 through its mental health program. And the legislation  
6 is that when we submit that and it's approved by the  
7 State, it becomes a contract. So not only did we  
8 disclose it, but it was a contract between the State and  
9 the County authorizing the expenditure of those funds  
10 for those purposes.

11           Lastly, with respect to the credit that the ALJ  
12 gave for CHIP funding that was not accounted for, there  
13 has been extensive argument throughout this proceeding  
14 in numerous briefs that have been presented to the  
15 Commission about whether or not CHIP funding is relevant  
16 or irrelevant to whether or not the State is entitled to  
17 a credit for the amount of CHIP funding. And let me  
18 just state that it's our position that the CHIP funding  
19 is irrelevant to the question of whether or not the  
20 County is entitled to recoup its costs through its CMS  
21 program -- that it expended through its CMS program.  
22 There has been no attempt in this proceeding to account  
23 for how the County spends its CHIP funding. And so --  
24 and the reason that is is because that issue is  
25 irrelevant to any issue before this Commission.

1           So the reason -- again, I disagree that they're  
2   entitled to a credit, and I also disagree that if we had  
3   made it an issue or if it was an issue that we could not  
4   have accounted for the funding.

5           With that I'd ask you to again consider the  
6   merits of the claim, consider whether or not the County  
7   of San Diego was, in fact, compelled to spend the money  
8   that it spent, and in assuming, I guess, in either  
9   event, whether the Commission decides for or against us  
10   on that issue, whether or not the State is entitled to  
11   any or all of the credits to which the ALJ has awarded  
12   the State.

13           CHAIRPERSON PORINI: All right. Questions from  
14   members? Staff comment?

15           MS. STEINMEIER: I would like to hear --

16           CHAIRPERSON PORINI: Mr. De La Guardia.

17           MS. STEINMEIER: After Mr. De La Guardia, I'd  
18   like to hear from staff.

19           CHAIRPERSON PORINI: Yes.

20           MR. DE LA GUARDIA: Thank you. I think it's  
21   important not to lose sight that the gravamen of the  
22   decision, the proposed decision, is that the County had  
23   not shown through a preponderance of evidence that there  
24   was cause to find the mandate caused the County to incur  
25   costs in excess of those provided by the State. And

1     that's a combination of recordkeeping, risk shifting,  
2     and the commingling of the CHIP program with the county  
3     medical services program.

4             When the Supreme Court remanded this case, it  
5     had -- and decided this case, it had no idea of how the  
6     County structured its services. It had no inkling of  
7     these contracts, these private contracts, and the risk  
8     shifting. As I've stated before, the question is always  
9     before the Commission as to whether a mandate is  
10    reimbursable, and the test is state funds provided or  
11    the availability of state funds. That, I think,  
12    addresses the relevancy of the contracts, and they go to  
13    the question of whether the County was required to incur  
14    these expenses. And we have historical evidence in the  
15    record that the following fiscal year the County cost --  
16    point costs were substantially lower than this  
17    particular fiscal year, so we know that that aspect of  
18    the contracts did work for the County.

19            Again, with the SLIAG funds, the question is  
20    were they available for the CMS program. They were.  
21    They were used someplace else. It was permissible to  
22    use it, but there's a difference between something being  
23    permissible and compelled. The same thing with the  
24    Short-Doyle funding. You could use Short-Doyle, but  
25    were you required to use it? No. I mean, were you

1 required to use CMS funds in Short-Doyle? The County  
2 was not.

3 On the issue of the 17000 population, the  
4 Supreme Court is a little bit confusing there. The  
5 17000 goes back to the earliest days of California, and  
6 that was the requirement of counties to take care of the  
7 indigent. What the Supreme Court said was in the  
8 mid-70s the State took over that when they admitted  
9 these people to Medi-Cal. They supplanted that 17000  
10 requirement.

11 There was a residual population, who were, I  
12 believe, nonresidents that the County was still required  
13 to take care of, a very small population. The Supreme  
14 Court refers in its decision to the 17000 medically  
15 indigent adults being 17000 population. So the State  
16 had argued that, well, that was a preexisting  
17 obligation. The Court said, no, you supplanted it.  
18 You're required for it. But that really is the source  
19 of the County's obligation. These are 17000  
20 individuals, section 17000, Welfare and Institutions  
21 Code.

22 The -- I would just submit it on -- I'm in  
23 agreement with the proposed decision. I'm in agreement  
24 with the staff recommendation for the mathematical  
25 corrections, and I would ask the Commission to adopt the

1 proposed decision and the staff report.

2 Thank you.

3 CHAIRPERSON PORINI: All right. Ms. Shelton.

4 MS. SHELTON: Well, let me just say that most of  
5 the arguments raised by both the County and the State  
6 have been brought before the ALJ. The ALJ has received  
7 numerous briefs, has held a two-day evidentiary hearing,  
8 has taken his first proposed decision back on remand,  
9 and we gave back everything, all the briefs, all the  
10 comments, everything. So he has looked at all the  
11 arguments, and these are not new arguments. And I think  
12 that the decision does address these arguments.

13 Secondly, I can comment on the Supreme Court's  
14 instructions, which were very specific. And the  
15 instructions said that the Commission is required to  
16 determine whether and by what amount the statutory  
17 standards of care forced San Diego to incur costs in  
18 excess of the funds provided by the State. And that  
19 instruction is consistent with Government Code section  
20 17514, which requires that the claimant prove that they  
21 have incurred increased costs mandated by the State for  
22 there to be reimbursement.

23 And the -- here the ALJ has found that the  
24 County has not incurred any increased cost, first  
25 because there's no competent or credible evidence to

1 support that claim. Secondly, if there was any  
2 increased costs, that economic risk was shifted to the  
3 private contract providers.

4 I believe that the ALJ did get into the numbers,  
5 you know, simply for the fact that if the case does go  
6 back up through the court process, that you want to have  
7 a correct disposition of the claim.

8 I would recommend that the Commission adopt the  
9 ALJ's opinion with those two modifications.

10 CHAIRPERSON PORINI: Mr. Beltrami.

11 MR. BELTRAMI: Did the ALJ consider the second  
12 point that Mr. Barry raised about the -- something being  
13 counted twice?

14 MS. SHELTON: You might ask him that. I'm not  
15 sure.

16 CHAIRPERSON PORINI: Mr. De La Guardia or  
17 Mr. Barry?

18 MR. BARRY: It's not apparent from the revised  
19 decision whether he considered that argument. The --  
20 the -- the amount that he had previously -- I think he  
21 excluded it as a credit, was 127,000 and some change.  
22 We pointed out to him that that was an error and that  
23 the amount should be zero, and he came back with a  
24 number of \$9,713.

25 So it was -- it's sort of a new issue that

1 wasn't really addressed, but -- and then I did point out  
2 in my comments to the revised proposed decision that we  
3 have already continued that, and so that was the first  
4 time really that I think that issue was specifically  
5 addressed.

6 MR. BELTRAMI: Mr. De La Guardia, do you have  
7 any comment?

8 MR. DE LA GUARDIA: I -- I would concur in that,  
9 that it wasn't really presented to the ALJ. It is a  
10 rather -- it's an alternative, assuming that -- that the  
11 preponderance of the evidence finding is not sustained  
12 and we get there. It's a rather -- to me it's a rather  
13 insignificant amount, given the magnitude of the claim,  
14 but I don't know if he did.

15 CHAIRPERSON PORINI: All right. Any questions  
16 or comments? Mr. Barry.

17 MR. BARRY: Sure. If I could just briefly  
18 respond to counsel's comments. With respect to the  
19 subsequent year funding of the CMS program, the evidence  
20 in the record and the testimony is that the way the  
21 County was able to hold together its coalition of  
22 providers for '91, '92 because of the continuing cut in  
23 state funding was to pledge any proceeds from this  
24 litigation that the County might realize to those  
25 providers. And so that was the condition of their

1 continuing to honor this and continuing to provide care.

2           Secondly, the -- the SLIAG reimbursement that  
3 the County received was not available to the CMS  
4 program. In fact, the County would have been diverting  
5 funds from other non CMS programs to the CMS program.  
6 It would have been diverting costs reimbursed to the  
7 County for non County -- for non CMS programs to the CMS  
8 program if it were to have expended the \$1,398,000 on  
9 the CMS program. So just the opposite is true. It  
10 would have been improper for us to have spent that money  
11 on the CMS program.

12           With respect to the Short-Doyle obligation,  
13 again, we're not talking about Short-Doyle obligation.  
14 The County had an obligation to provide matching funds.  
15 It provided an overmatch. That was discretionary.  
16 That's not the money we're talking about. The money  
17 we're talking about is CMS funds that were paid, that  
18 was paid by the County through its county mental health  
19 services program for CMS-eligible persons. Those  
20 individuals are separate and distinct from the 17000  
21 population, and the Supreme Court specifically found  
22 that to be the case.

23           With respect to the issue of whether or not we  
24 met our burden of proof, again, Attachment A, which is  
25 at page 206 of your -- of your binder, the checks that

1 evidence all of those expenditures, the -- the  
2 documentation that supports all of the internal county  
3 expenses are in the record. And if we have to litigate  
4 that, I'd be more than happy to litigate that issue. We  
5 produced thousand upon thousands upon thousands of  
6 checks to the ALJ, and they're in the record, so I don't  
7 believe that the ALJ -- well, the ALJ found that we  
8 continued to fund the CMS program at the \$41 million  
9 level for '90, '91. That's in his proposed decision.

10 CHAIRPERSON PORINI: All right.

11 MR. BARRY: So I think the issue is whether --  
12 is solely whether or not we were compelled to spend the  
13 money that was spent.

14 CHAIRPERSON PORINI: Questions or comments from  
15 members? Do I have a motion?

16 MS. STEINMEIER: I'm going to move the decision  
17 with the mathematical corrections.

18 CHAIRPERSON PORINI: Do I have a second?

19 MS. HALSEY: Is that adoption of the staff  
20 analysis?

21 MS. STEINMEIER: Yes.

22 MS. HALSEY: I'll second that.

23 CHAIRPERSON PORINI: All right. We have a  
24 motion and a second.

25 MS. HIGASHI: And the motion --

1           CHAIRPERSON PORINI: Ms. Higashi.

2           MS. HIGASHI: And the motion covers the adoption

3 of the proposed statement of decision presented by the

4 administrative law judge.

5           CHAIRPERSON PORINI: Yes.

6           MS. SHELTON: Exhibit A.

7           MS. HIGASHI: With the modifications.

8           MS. STEINMEIER: With the modifications from the

9 staff analysis.

10          CHAIRPERSON PORINI: All right. So we have a

11 motion and a second. Is there discussion?

12          MR. BELTRAMI: Not the modification on that one

13 small item?

14          MS. STEINMEIER: Not that last one, no. Just

15 what the staff had. You know --

16          CHAIRPERSON PORINI: Page 4 of the staff

17 analysis.

18          MS. STEINMEIER: Right, which is on page 4 of

19 the staff analysis. I'm really glad we gave this to an

20 ALJ. This is an incredibly difficult one, and I think

21 we'd have still been here debating this till sunset and

22 beyond. So I don't understand all the nuances of that,

23 and so I'm not -- I move we make the major correction

24 that staff recommends.

25          CHAIRPERSON PORINI: All right. Further

1 discussion? Comments?

2 May I have roll call.

3 MS. HIGASHI: Mr. Beltrami.

4 MR. BELTRAMI: Yes.

5 MS. HIGASHI: Mr. Harigan.

6 MR. HARIGAN: Aye.

7 MS. HIGASHI: Ms. Halsey.

8 MS. HALSEY: Aye.

9 MS. HIGASHI: Mr. Lazar.

10 MR. LAZAR: Yes.

11 MS. HIGASHI: Mr. Sherwood.

12 MR. SHERWOOD: Aye.

13 MS. HIGASHI: Ms. Steinmeier.

14 MS. STEINMEIER: Aye.

15 MS. HIGASHI: Ms. Porini.

16 CHAIRPERSON PORINI: Aye.

17 MS. HIGASHI: Motion carries.

18 CHAIRPERSON PORINI: So that will take us to our

19 last item.

20 MS. HIGASHI: Which is Item 16. Item 16 is the

21 Executive Director's Report. The report includes

22 workload documentation information. We also discuss the

23 annual claims bill, which should be introduced within

24 the next couple of weeks. Friday is the deadline for

25 getting bill text to the Legislative Council.

1           The Governor's budget, I gave you some  
2   information from the Governor's budget, excerpted some  
3   pages and included them in your agenda items. This  
4   year's budget does include set-asides for mandates, and  
5   I just wanted to make that note. The statewide cost  
6   estimate, which was adopted earlier today, is covered in  
7   the Governor's budget.

8           Reports to the legislature were issued at the  
9   beginning of the year. And the future agenda items are  
10  listed as well. We anticipate that the next hearing  
11  will be a shorter hearing, and that it should be over by  
12  around noon, if it goes that late.

13           Are there any questions?

14           CHAIRPERSON PORINI: Okay. Questions or  
15  comments from members?

16           MS. HIGASHI: I have one introduction I'd like  
17  to make, one of our newest staff member, Jason Rogers.  
18  He is -- please stand up, Jason. Jason is assuming all  
19  of our IT functions in the office.

20           CHAIRPERSON PORINI: Welcome.

21           Anything else under the Executive Director's  
22  Report?

23           MS. HIGASHI: As we -- as I indicated in the  
24  notice mailing for those who perhaps missed the  
25  announcement, our -- Pat Hart Jorgensen, our former

1 chief legal counsel, accepted a job with the Legislative  
2 Council, and her last day with the Commission officially  
3 was January 1st. So just for your information,  
4 Ms. Shelton is -- sitting here to my right, is acting  
5 counsel.

6 CHAIRPERSON PORINI: Is there any other business  
7 to come before the meeting? We do have a closed  
8 session. Any public comments?

9 All right. Hearing none, I will announce that  
10 the Commission will meet in closed executive session  
11 pursuant to Government Code section 11126,  
12 subdivision e, to confer with and receive advice from  
13 legal counsel for consideration and action as necessary  
14 and appropriate upon pending litigation listed on the  
15 published notice and agenda as A-1 through 13,  
16 inclusive, and to confer with and receive advice from  
17 legal counsel regarding potential litigation, and  
18 Government Code section 11126, subdivision a, and 17526,  
19 the Commission will also confer on personnel matters  
20 listed on the published notice and agenda.

21 We will reconvene in public session at this  
22 location in approximately a half hour.

23 With that, I'd ask that everyone not required to  
24 be here please leave our closed session, and let's take  
25 about a ten-minute break here.

1           (Recess taken.)

2           CHAIRPERSON PORINI: For the record, we would  
3 like to first indicate that Bill Sherwood representing  
4 the Treasurer had to leave, and Bruce Van Houten from  
5 the Treasurer's Office has joined us.

6           Then I'd like to report that the Commission met  
7 in closed executive session pursuant so Government Code  
8 section 11126, subdivision e, to confer with and receive  
9 advice from legal counsel for consideration and action  
10 as necessary and appropriate upon the pending litigation  
11 listed on the published notice and agenda and potential  
12 litigation and Government Code section 11126,  
13 subdivision a, and 17526 to confer on personnel matters  
14 listed on the published notice and agenda.

15           All required reports from the closed session  
16 having been made, with no further business to discuss,  
17 I'll entertain a motion to adjourn.

18           MR. BELTRAMI: So moved.

19           CHAIRPERSON PORINI: We have a motion.

20           MS. STEINMEIER: Second.

21           CHAIRPERSON PORINI: And a second. With that,  
22 unanimously we're adjourned. Thank you very much.

23           (Whereupon the hearing concluded at 12:00 noon.)

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REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held  
at the time and place therein named; that the  
proceedings were reported by me, a duly certified  
shorthand reporter and a disinterested person, and was  
thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand  
this 5th day of February, 2001.

Yvonne K. Fenner  
Certified Shorthand Reporter  
License No. 10909

